

FAX



**DEPARTMENT OF FISH AND GAME**

**Inland Deserts Region (6)  
4665 Lampson Avenue, Suite J  
Los Alamitos, CA 90720  
(562) 596-4212  
(562) 799-3629 (FAX)**

To: Chris Seney Fax: 760 247-4087  
Date: 11/23/10 Pages: 22  
Re: 2081- Hawes Composting Facility

From: Kathleen Banda

Comments: This is the first 20 pages of the  
permit. The permit is not binding  
until a copy is received in Sacramento  
(see cover letter). The 2 original permits  
are being sent to you today via U.S. mail.



Thank you,  
Kathleen Banda



DEPARTMENT OF FISH AND GAME

Inland Deserts Region (6)  
4665 Lampson Avenue, Suite J  
Los Alamitos, California 90720  
<http://www.dfg.ca.gov>



November 22, 2010

Mr. Chris Seney, P.E.  
Nursery Products, LLC  
647 Camino de los Mares, #108-174  
San Clemente, CA 92673

**Subject: Incidental Take Permit for Nursery Products, LLC  
Hawes Composting Facility  
(2081-2008-017-06)**

Dear Mr. Seney:

Enclosed you will find two originals of the incidental take permit for the above referenced Project, which have been signed by the Department. Please read the permit carefully, sign the acknowledgement on both copies of the permit, and return one original **no later than 30 days from Department signature**, and prior to initiation of ground-disturbing activities, to:

Department of Fish and Game  
Habitat Conservation Branch, CESA Permitting  
1416 Ninth Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

You are advised to keep the other original signature permit in a secure location and distribute copies to appropriate project staff responsible for ensuring compliance with the conditions of approval of the permit. Note that you are required to comply with certain conditions of approval prior to initiation of ground-disturbing activities. Additionally, a copy of the permit must be maintained at the project work site and made available for inspection by Department staff when requested.

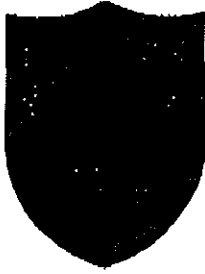
The permit will not take effect until the signed acknowledgement is received by the Department. If you wish to discuss these instructions or have questions regarding the permit, please contact Mr. Jeb Bjerke, Environmental Scientist, at (916) 651-3122.

Sincerely,

Kimberly Nicol  
Regional Manager

Enclosures (2)

*Conserving California's Wildlife Since 1870*



California Department of Fish and Game  
Inland Deserts Region  
3602 INLAND EMPIRE BOULEVARD, SUITE C-220  
ONTARIO, CALIFORNIA 91764

California Endangered Species Act  
Incidental Take Permit No. 2081-2008-017-06

**HAWES COMPOSTING FACILITY**

**Authority:** This California Endangered Species Act (CESA) Incidental Take Permit (ITP) is issued by the Department of Fish and Game (DFG) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. CESA prohibits the take<sup>1</sup> of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.<sup>2</sup> DFG, however, may authorize the take of any such species by permit if the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) are met. (See also Cal. Code Regs., tit. 14, § 783.4.)

**Permittee:**

**Nursery Products, LLC**

**Principal officer:**

**Jeff Meberg, Principal Officer**

**Contact person:**

**Chris Seney, P.E., (760) 843-9181**

**Mailing address:**

**647 Camino de los Mares, #108-174  
San Clemente, California 92673**

**Effective Date and Expiration Date of the ITP:**

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of the ITP and returned to DFG's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by DFG, this ITP's authorization to take the Covered Species shall expire on **October 1, 2015**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until DFG accepts as complete the Permittee's Final Mitigation Report required by Condition 5.6 of this ITP.

<sup>1</sup>Pursuant to Fish and Game Code section 86, "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill."

<sup>2</sup>"Candidate species" are species of wildlife that have not yet been placed on the list of endangered species or the list of threatened species, but which are under formal consideration for listing pursuant to Fish and Game Code section 2074.2.

**Project Location:**

The Hawes Composting Facility Project (Project) is located west of the City of Barstow, in unincorporated San Bernardino County, approximately eight miles west of Hinkley, and approximately 12.3 miles east of Kramer Junction. The Project site is approximately one mile south of State Route 58 and one mile west of Helendale Road (Figure 1). The Project site is located on private land owned by the Permittee, near the abandoned Hawes Airfield. Helendale Road is the closest County-maintained road to the Project. An existing roadway crosses Bureau of Land Management (BLM) land from Helendale Road west to the Project site and will provide Project access.

**Project Description:**

The Project includes construction of the Hawes Composting Facility which will provide cost-effective local biosolids and green material recycling capacity for the County of San Bernardino and the Inland Empire. Permittee will develop 80 acres of land within an undeveloped 160-acre parcel into a biosolids and green material recycling facility. The remaining 80 acres will not be developed as a part of the Project. The Hawes Composting Facility will receive a daily average of 1,100 tons/day of biosolids and green material and 200 tons/day of clean soil or other inert amendment materials, which will be recycled to produce agricultural and general use compost. Unusable residues will be placed in a trash receptacle for transport and disposal at a permitted solid waste landfill. The finished compost will be sold for use by golf courses, farmers, nurseries, and homeowners as set forth in EPA regulations. 1.3 miles of an existing 12-foot-wide dirt road across BLM land will be used to access the Project site. Permittee has applied to BLM for a 1.3 mile road right-of-way. The existing 12-foot-wide dirt road would be expanded to a paved width of 28-feet, increasing to a paved width of 56-feet at its intersection with Helendale Road. The proposed right-of-way covers a total area of approximately 6.5 acres.

**Covered Species Subject to Take Authorization Provided by this ITP:**

This ITP covers the following species:

Name	CESA Status <sup>3</sup>
1. Mohave ground squirrel ( <i>Spermophilus mohavensis</i> )	Threatened (Cal. Code Regs. tit. 14 § 670.5, subd. (b)(6)(A).)
2. Desert tortoise ( <i>Gopherus agassizii</i> )	Threatened (Cal. Code Regs. tit. 14 § 670.5, subd. (b)(4)(A).)

<sup>3</sup>Under CESA, a species may be on the list of endangered species, the list of threatened species, or the list of candidate species. All other species are "unlisted."

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These species and only these species are hereinafter referred to as "Covered Species."

**Impacts to Covered Species:**

Project activities are expected to result in the incidental take of individuals of the Covered Species, and impacts of the taking on Covered Species. The activities described above that are expected to result in incidental take of individuals of the Covered Species include construction of the recycling facility, expansion and paving of the access roadway, vehicle traffic to and from the facility, and capture and relocation as described in this ITP (Covered Activities). Incidental take of individuals of the Covered Species may occur from the Covered Activities in the form of mortality ("kill") from construction and vehicle strikes, and as a result of habitat loss. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of catch and capture of the Covered Species as required in Conditions 6.1, 6.5, and 6.7 of this ITP. Take could occur on the 80 acres that will be used for construction of the recycling facility, and along the 6.5 acres of the access route right-of-way from Helendale Road (Project Area). The Project will cause the permanent loss of 86.5 acres of habitat for the Covered Species. Impacts of the proposed taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). Increased truck traffic along the access route may also increase the amount of road-killed mammals and reptiles. This increased availability of carrion could attract ravens to the Project vicinity and lead to increased potential for predation of hatchling desert tortoise.

**Incidental Take Authorization of Covered Species:**

In this case, because the Environmental Impact Report is the subject of litigation in which an injunction has been granted pending a final determination that the document complies with CEQA (for reasons not related to biological resources), the Department of Fish and Game, acting as a responsible agency, is issuing a conditional approval pursuant to Public Resources Code section 21167.3. "A conditional approval shall constitute permission to proceed with a project when and only when such action or proceeding results in a final determination that the environmental impact report ... does comply with the provisions of this division." (Pub. Resources Code, § 21167.3(a).)

This ITP authorizes incidental take of the Covered Species and only the Covered Species. With respect to incidental take of the Covered Species, DFG authorizes the Permittee, its employees, contractors, and agents to take Covered Species incidentally in carrying out the Covered Activities, subject to the final determination described above and other limitations described in this section and the Conditions of Approval identified below. This ITP does not authorize take of Covered Species from activities outside the scope of the Covered Activities,

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take of Covered Species outside of the Project Area, take of Covered Species resulting from violation of this ITP, or intentional take of Covered Species except for capture and relocation of Covered Species as authorized by this ITP.

**Conditions of Approval:**

Unless specified otherwise, the following measures shall pertain to all Covered Activities within the Project Area, including areas used for vehicular ingress and egress, staging and parking. DFG's issuance of this ITP and Permittee's authorization to take the Covered Species are subject to Permittee's compliance with and implementation of the following Conditions of Approval:

1. Legal Compliance. Permittee shall comply with all applicable state, federal, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. CEQA Compliance. Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Mitigation Monitoring and Compliance Program developed under the Environmental Impact Report (EIR) (SCH Number: 2006051021) by the lead agency, County of San Bernardino, for the Project pursuant to the California Environmental Quality Act (CEQA) and certified on February 27, 2007. A Supplemental EIR for limited sections unrelated to Biological Resources was certified on July 13, 2010 by the County of San Bernardino.
3. ITP Time Frame Compliance. Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.

**4. General Provisions:**

- 4.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with DFG and overseeing compliance with this ITP. The Permittee shall notify DFG in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify DFG in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
- 4.2. Designated Biologist. Permittee shall submit to DFG in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the

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biology and natural history of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain DFG approval of the Designated Biologist before starting Covered Activities.

- 4.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall have authority to immediately stop any activity that is not in compliance with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species, or a species not covered by this ITP.
- 4.4. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided for any new workers before their performing work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.
- 4.5. Construction Monitoring Notebook. The Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall maintain a copy of the construction-monitoring notebook that is available for review upon request by DFG.
- 4.6. Trash Abatement. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in closed (animal-proof) containers and removed regularly (at least once a week) to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 4.7. Raven Management. Permittee shall prepare and submit to DFG for approval, a

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Raven Management Plan before starting Covered Activities to monitor raven activity, and set forth appropriate management and control measures to minimize raven activity. Effectiveness of the Raven Management Plan will be reviewed at least annually.

- 4.8. Dust Control. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed, and shall not allow water to form puddles. Permittee shall obtain water as needed pursuant to an LSA agreement and water rights.
- 4.9. Firearms and Dogs. Permittee shall prohibit firearms and domestic dogs from the Project Area and site access routes during Covered Activities, except those in the possession of authorized security personnel or local, State, or federal law enforcement officials.
- 4.10. Delineation of Property Boundaries. Before starting Covered Activities, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes or flags. Permittee shall restrict all Covered Activities to within the fenced, staked or flagged areas in order to facilitate pre-construction surveys and installation of permanent tortoise-proof fence and under-crossings (Conditions 6.1, 6.2 and 6.3 below). Permittee shall maintain all fencing, stakes and flags until the completion of Covered Activities.
- 4.11. Surface-Disturbing Activities. Project-related vehicle traffic, parking, storage areas, lay-down sites, equipment storage, and other surface-disturbing activities shall be restricted to established roads and the fenced Project Area and shall not traverse habitat outside of Project Area boundaries. If Permittee determines off-site routes for travel are necessary, Permittee shall contact DFG prior to carrying out such an activity. DFG may require an amendment to this ITP if additional take of Covered Species may result from Project modification.
- 4.12. Hazardous Waste. Permittee shall immediately stop and following pertinent State and federal statutes and regulations arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.
- 4.13. DFG Access. Permittee shall provide DFG staff with reasonable access to the Project and shall otherwise fully cooperate with DFG efforts to verify compliance with

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or effectiveness of mitigation measures set forth in the ITP.

- 4.14. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

**5. Monitoring, Notification and Reporting Provisions:**

- 5.1. Notification Before Commencement. The Designated Representative shall notify DFG 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 5.2. Notification of Non-compliance. The Designated Representative shall immediately notify DFG in writing if it determines that the Permittee is not in compliance with any condition of approval of this ITP, including but not limited to any actual or anticipated failure to implement take avoidance and/or mitigation measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with the ITP to DFG within 24 hours.
- 5.3. Compliance Monitoring. The Designated Biologist shall be on-site daily when Covered Activities occur. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) check for compliance with all mitigation and avoidance measures; (3) check all exclusion zones; and (4) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.
- 5.4. Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition 5.3 into a Monthly Compliance Report and submit it to DFG along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to DFG's Regional Office at the office listed in the Notices section of this ITP and via e-mail to DFG's Regional Representative. At the time of this ITP's approval, the DFG Regional Representative is Eric Weiss (eweiss@dfg.ca.gov). DFG may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If DFG determines

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the reporting schedule must be changed, DFG will notify Permittee by letter of the new reporting schedule.

**5.5. Annual Status Report.** Permittee shall provide DFG with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of the ITP and continuing until DFG accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports identified in Condition 5.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; and (6) information about other Project impacts on the Covered Species.

**5.6. Final Mitigation Report.** No later than 45 days after completion of all mitigation measures, Permittee shall provide DFG with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) dates of Covered Activities; (6) an assessment of the effectiveness of the ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.

## **6. Take Minimization Measures:**

The following requirements are intended to ensure the minimization of incidental take of Covered Species in the Project Area during Covered Activities. Permittee shall implement and adhere to the following conditions to minimize take of Covered Species:

**6.1. Pre-construction Surveys.** No more than 30 days before Covered Activities begin, the Designated Biologist shall conduct pre-construction surveys for Covered Species. These surveys shall cover 100 percent of the Project Area, including the access route from Highway 58 and a 50-foot buffer zone around these areas. Survey methodology shall follow the United States Fish & Wildlife Service (USFWS) 2010 Pre-project Field Survey Protocol. The Designated Biologist shall flag all potential burrows within the

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surveyed area. Within 30 days of performing the pre-construction surveys, the Designated Biologist shall submit a report to DFG documenting results (using the USFWS Protocol data sheet) and include a Translocation Plan (following the USFWS August 2010 guidance document). Upon receipt and approval of the report and Translocation Plan by DFG, the Designated Biologist shall excavate Covered Species burrows and relocate individuals as described in Conditions 6.2, 6.4, 6.5, and 6.7 of this ITP.

- 6.2. Exclusion Fencing. With the Designated Biologist present and prior to beginning Covered Activities, the Permittee shall install a permanent tortoise-proof fence along the perimeter of the 86.5-acre Project Area, the intersection area with Helendale Road, and the length of Helendale Road north to Highway 58. Fence design shall be consistent with the USFWS 2005 exclusion fence design specifications. After fence installation, the Designated Biologist shall conduct clearance surveys for desert tortoise. Live desert tortoise observed within the fenced Project Area shall be relocated by the Designated Biologist outside the fenced area, preferably at their burrow location.
- 6.3. Tortoise Crossings. In conjunction with Condition 6.2 (above), Permittee shall install no fewer than three below-grade desert tortoise under-crossings at appropriate locations along the right-of-way, subject to the right-of-way application.
- 6.4. Burrow Survey and Collapse. Immediately prior to the start of Covered Activities, the Designated Biologist shall again survey the Project Area, the intersection area with Helendale Road, and the length of Helendale Road north to Highway 58 within the fenced area for Covered Species and their burrows. The Designated Biologist shall inspect all burrows within the surveyed area for habitation (the use of specialized fiber optics equipment may be necessary) prior to collapsing them. Before initiating the collapse of any burrow, the Permittee shall adhere to the following provisions specific to the Covered Species.
- 6.5. Burrow Excavation. The Designated Biologist shall fully excavate by hand all burrows within the 86.5-acre Project Area that are suspected or known to be occupied by Mohave ground squirrels. The Designated Biologist shall allow Mohave ground squirrels encountered in the excavated burrows during their *active period* to escape out of harm's way. During the Mohave ground squirrel *dormant period*, the Designated Biologist shall collect and immediately relocate any Mohave ground squirrels found to artificial burrows at a protected off-site location approved in advance by DFG's Regional Representative. Mohave ground squirrels may only be handled and relocated by the Designated Biologist. The Designated Biologist shall prepare relocation burrows in the following manner: a hole of at least two feet deep

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shall be dug, a nine-inch diameter non-collapsible plastic container shall be placed in the hole, the container shall be connected to a flexible three-inch diameter non-collapsible plastic pipe that runs to the ground surface at a 45-degree angle, and the artificial burrow shall be covered with dirt with the surface end of the three-inch pipe remaining open. The Designated Biologist shall place the Mohave ground squirrel in the artificial burrow and lightly plug the burrow mouth with soil in a manner that is similar to a natural Mohave ground squirrel burrow.

- 6.6. Covered Species Observation. The Designated Representative shall immediately, or no later than noon on the next business day, notify DFG of any Covered Species observations. Notification to DFG shall be via telephone or e-mail, followed by a written report. Notification and the written report shall include the date, location, and circumstances of the observation, the name of the Designated Biologist that relocated the individual, and the location (including GPS coordinates) where the individual was moved.
- 6.7. Tortoise Handling. Using the methods described in the Tortoise Handling Guidelines (Attachment 2), the Designated Biologist shall capture, collect measurement and identification data, permanently mark, and relocate any desert tortoise found within the Project Area to suitable, undisturbed off-site habitat. The Designated Biologist shall follow all excavation, capture, handling, and relocation procedures described in the Tortoise Handling Guidelines in order to protect the health and well-being of the desert tortoise. If a desert tortoise is found above ground, the Designated Biologist shall release it above ground in suitable habitat and conditions. If a desert tortoise is found during burrow excavation, the Designated Biologist shall relocate it to an unoccupied burrow of similar size. If no such burrow is available for relocating, the Designated Biologist shall construct an artificial burrow similar in size, depth, and orientation to the original burrow. The Designated Biologist shall follow all protocols for the construction of the artificial burrows found in the Desert Tortoise Handling Guidelines. The Designated Biologist shall record the location of all tortoise burrows, tortoises, and relocation sites using GPS technology. The Designated Biologist shall collapse all potential or actual desert tortoise burrows present within the Project Area after establishing that they are not currently occupied by desert tortoise.
- 6.8. Injured or Dead Covered Species. If a Covered Species is injured or killed as a result of Project-related activities or if a Covered Species is otherwise found injured or dead within the Project Area or vicinity, Permittee shall immediately notify the Designated Biologist. The Designated Biologist shall immediately take injured individuals to a DFG-approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility prior to the start of Covered Activities. Permittee shall bear all costs associated with the care or treatment of such Injured Covered Species. The

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Designated Biologist shall immediately notify DFG by calling the Regional Office at the phone number listed in the Notices section of this ITP and e-mailing the DFG Regional Representative. Initial notification to DFG shall include this ITP Number (2081-2008-017-06), the date, time and location where the Covered Species was found, what specific Covered Species was found and how many individuals were injured or killed. Within two calendar days of initial notification, Permittee shall send a written report to all four DFG offices listed in the Notices section of this ITP. The written report shall include the initial notification information, the disposition of the injured Covered Species or location of the carcass, and if possible, a photograph, an explanation as to the injury or cause of death, and any other pertinent information.

6.9. Record of Handling. The Designated Biologist shall maintain a record of all desert tortoises handled. This information shall include the following for each tortoise: (1) the locations and dates of observation; (2) the general condition and health, including injuries, state of healing, and whether the desert tortoise voided its bladder; (3) the location moved from and location moved to (using GPS technology); (4) diagnostic markings (i.e., identification numbers or marked lateral scutes); (5) ambient temperature when handled and released; and (6) digital photographs of each handled desert tortoise. The Designated Biologist shall mark each desert tortoise moved from within the Project Area using the acrylic paint epoxy covering technique on the fourth left costal scute as described in the Desert Tortoise Handling Guidelines. The Designated Biologist shall take digital photographs of the carapace, plastron, and fourth costal scute of each desert tortoise handled (notching of scutes is NOT permitted). The Designated Representative shall record the information detailed above in the daily observation and inspection records for inclusion in the Monthly Compliance Report as directed in Condition 5.4 above.

6.10. Project-related Traffic. Permittee shall restrict Project-related vehicle traffic to established roads and the fenced Project Area; cross-country (off-road) vehicle travel is prohibited and signs shall be posted to this affect. Vehicle speeds shall be posted not to exceed 20 mph in order to see, identify and avoid Covered Species on or traversing the Project Area and roads. Drivers shall stop, wait for the Covered Species to move off the road, and immediately notify the Designated Biologist of the Covered Species location.

## 7. Habitat Management Land Acquisition:

DFG has determined that permanent protection and perpetual management of compensatory habitat is necessary pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result with implementation of the Covered Activities. This determination is based on factors including an assessment of the

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importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and DFG's estimate of the acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall provide for the permanent protection and management of 259.5 acres of Habitat Management (HM) lands by completing the transfer of fee title, the recordation of the conservation easement, and calculation and deposit of the management funds before starting Covered Activities, or within 18 months if Security is provided pursuant to Condition 8 below. A minimum of 3 months prior to acquisition of HM Lands, the Permittee shall submit to DFG for approval a formal Proposed Lands for Acquisition Form (Attachment 3A) identifying the land to be purchased as mitigation for the Project's impacts on Covered Species.

**7.1. Cost Estimates.** DFG has estimated the cost of acquisition, protection, and management of the HM lands as follows:

7.1.1. Land acquisition costs for HM lands identified in Condition 7.2 below, estimated at \$3,000.00/acre for 259.5 acres: **\$778,500.00**. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;

7.1.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition 7.2.3 below, and interim management period funding as described in Condition 7.2.4 below, together estimated at \$1,000.00/acre for 259.5 acres: **\$259,500.00**, and;

7.1.3. Long-term management funding as described in Condition 7.3 below, estimated at \$1,300.00/acre for 259.5 acres: **\$337,350.00**. The long-term management endowment fund is estimated initially for the purpose of providing Security to ensure implementation of HM land management.

**7.2. Habitat Acquisition and Protection.** To provide for the acquisition and protection of the HM lands, the Permittee shall:

7.2.1. **Fee Title/Conservation Easement.** Transfer fee title to the HM lands to DFG pursuant to terms approved by DFG. Alternatively, a DFG-approved non-profit organization qualified pursuant to California Government Code section 65965, or DFG-approved public agency (collectively, "approved entity") may hold fee title or act as grantee for a conservation easement over the HM lands. If an approved entity holds fee title, Permittee shall record a conservation easement in favor of DFG as grantee. If an approved entity holds a conservation easement, DFG shall

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be named third party beneficiary. The Permittee shall obtain DFG approval of any conservation easement before its recordation;

7.2.2. HM Lands Documentation. Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 3A, 3B, 4). All documents conveying the HM lands and all conditions of title are subject to the approval of DFG, and if applicable, the Wildlife Conservation Board and the Department of General Services;

7.2.3. Start-up Activities and Interim Management. Provide for the implementation of the start-up activities including the initial site protection and enhancement of HM Lands, once the HM lands have been approved by DFG. Start-up activities include, at a minimum: (a) preparing an interim and/or long-term management plan for DFG approval; (b) conducting a baseline biological assessment and land survey report within 4 months of recording or transfer; (c) developing and transferring Geographic Information Systems (GIS) data if applicable; (d) establishing initial fencing; (e) conducting litter removal; (e) conducting initial habitat restoration or enhancement, if applicable; and (f) installing signage;

7.2.4. Interim Management. Provide for the interim management of the HM lands. The interim management period is often 1-5 years and includes first year management obligations and more frequent species and habitat monitoring conducted to establish stability and trends on the mitigation site. Interim management period activities include fence repair, continuing trash removal, site monitoring, and vegetation management.

7.3. Endowment Fund. The Permittee shall provide long-term management funding for the in-perpetuity management of the HM lands by establishing a long-term management fund (Endowment Fund). The Endowment Fund is a sum of money, held in a DFG-authorized trust fund that provides funds for the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan(s) required by Condition 7.2.3. Endowment Fund as used in this ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. As part of this condition, the Permittee shall:

7.3.1. Identify an Endowment Fund Manager. The Endowment Funds shall be held by the California Wildlife Foundation, DFG, or another entity approved in advance in writing by DFG to hold endowment funds;

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7.3.2. Calculate the Endowment Funds Deposit. After obtaining DFG approval of the HM lands, interim and/or long-term management plan, and Endowment Fund Manager, Permittee shall prepare a Property Analysis Record (PAR) or PAR-equivalent analysis to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Permittee shall submit to DFG for review and approval the results of the PAR or PAR-equivalent analysis before transferring funds to the Endowment Fund Manager. Portions from the Endowment Fund shall be available for reinvestment in the principal, administrative fees, conservation easement monitoring and defense, land protection enforcement measures, and the long-term management, maintenance, monitoring and protection of the HM lands pursuant to the management plan;

7.3.3. Transfer Long-term Endowment Funds. Permittee shall transfer the long-term endowment funds to the Endowment Fund Manager upon DFG approval of the Endowment Deposit Amount identified above. The approved Endowment Fund Manager may pool the Endowment Fund with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment Fund.

7.4. Reimburse DFG. Permittee shall reimburse DFG for all reasonable expenses incurred during title and documentation review, expenses incurred from other state agency reviews, and overhead related to transfer of HM Lands to DFG.

## **8. Performance Security:**

The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition 7 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

8.1. Security Amount. The Security shall be in the amount of **\$1,375,350.00**. This amount is based on the cost estimates identified in Condition 7.1 above;

8.2. Security Timeline. The Security shall be provided to DFG before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first;

8.3. Security Form. The Security shall be in the form of an Irrevocable letter of credit (see Attachment 4) or another form of Security approved by DFG's Office of the General Counsel;

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8.4. Security Holder. The Security shall be held by DFG or in a manner approved by DFG;

8.5. Security Transmittal. The security shall be transmitted to DFG with a completed Mitigation Payment Transmittal Form (see Attachment 5);

8.6. Security Drawing. The Security shall allow DFG to draw on the principal sum if DFG, at its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP; and

8.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after all secured requirements have been met as evidenced by:

- Timely submission of all required reports;
- An on-site inspection by DFG; and
- Written approval from DFG

Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 18 months after the start of Covered Activities. DFG may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.

**Amendment:**

This ITP may be amended as provided by California Code of Regulations, Title 14, section 783.6, subdivision (c), and other applicable regulations and law. This ITP may also be amended without the concurrence of the Permittee as required by law, including if DFG determines that continued implementation of the Project under existing ITP conditions would jeopardize the continued existence of the Covered Species or that Project changes or changed biological conditions necessitate an ITP amendment to ensure that impacts to the Covered Species are minimized and fully mitigated.

**Stop-Work Order:**

DFG may issue Permittee a written stop-work order to suspend any activity covered by this ITP for an initial period of up to 25 days to prevent or remedy a violation of ITP conditions (including but not limited to failure to comply with reporting, monitoring, or habitat acquisition obligations) or to prevent the illegal take of an endangered, threatened, or candidate species. Permittee shall comply with the stop-work order immediately upon receipt thereof. DFG may extend a stop-work order under this provision for a period not to exceed 25 additional days.

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upon written notice to the Permittee. DFG may commence the formal suspension process pursuant to California Code of Regulations, Title 14, section 783.7 within five working days of issuing a stop-work order. Neither the Designated Biologist nor DFG shall be liable for any costs incurred in complying with stop-work orders.

**Compliance with Other Laws:**

This ITP contains DFG's requirements for the Project pursuant to CESA. This ITP does not necessarily create an entitlement to proceed with the Project. Permittee is responsible for complying with all other applicable state, federal, and local laws.

**Notices:**

The Permittee shall deliver a fully executed duplicate original ITP by registered first class mail or overnight delivery to the following address:

Habitat Conservation Planning Branch  
California Department of Fish and Game  
Attention: CESA Permitting Program  
1416 Ninth Street, Suite 1260  
Sacramento, CA 95814

Written notices, reports and other communications relating to this ITP shall be delivered to DFG by registered first class mail at the following addresses, or at addresses DFG may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2008-017-06) in a cover letter and on any other associated documents.

**Original cover with attachment(s) to:**

Kimberly Nicol, Regional Manager  
Inland Deserts Region  
3602 Inland Empire Boulevard, Suite C-220  
Ontario, California 91764  
Telephone (760) 200-9178  
Fax (760) 200-9358

**Copy of cover without attachment(s) to:**

Office of the General Counsel  
California Department of Fish and Game  
1416 Ninth Street, 12th Floor  
Sacramento, CA 95814

**And:**

Habitat Conservation Planning Branch

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California Department of Fish and Game  
1416 Ninth Street, Suite 1260  
Sacramento, CA 95814

Unless Permittee is notified otherwise, DFG's Regional Representative for purposes of addressing issues that arise during implementation of the ITP is:

Eric Weiss, Environmental Scientist  
California Department of Fish and Game  
12550 Jacaranda Ave  
Victorville, CA 92395  
Telephone (909) 980-8607  
Email eweiss@dfg.ca.gov

**Compliance with CEQA:**

DFG's issuance of the ITP is subject to CEQA. DFG is a responsible agency pursuant to CEQA with respect to the ITP because of prior environmental review of the Project by the lead agency, County of San Bernardino. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Environmental Impact Report Nursery Products Hawes Composting Facility (State Clearinghouse #2006051021) (EIR) certified on February 27, 2007 and a Supplemental Environmental Impact Report (SEIR) for the Project certified on July 13, 2010. At the time the lead agency certified the EIR and SEIR and approved the Project it also adopted all mitigation measures described in the EIR and SEIR as conditions of Project approval.

The biological resource evaluation for the project is described in Section 4.4 of the Draft EIR. The analysis included the access road as well as the 160 acre proposed project site. The Biological Resources Survey for the Project, including the access road was included as Appendix C to the DEIR. Potential biological impacts related to the road are set forth in mitigation measures B-2 (purchase of conserved habitat based upon DFG requirements), B-7 (prohibition of off-road vehicle use), B-8 (speed limit on the access road for desert tortoise protection), and B-11 (required preparation of a Habitat Conservation Plan and incidental take permit from state and federal wildlife agencies prior to construction of the Project). In addition, the County imposed a limitation of the Project area to 80 of the proposed 160 acres based upon habitat considerations.

In fulfilling its obligations as a responsible agency, DFG's obligations pursuant to CEQA are more limited than those of the lead agency. DFG, in particular, is responsible for considering only the effects of those Project activities that it is required by law to carry out or approve, and mitigating or avoiding only the direct or indirect environmental effects of those parts of the Project that it decides to carry out, finance, or approve (Pub. Resources Code, § 21002.1).

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subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).<sup>4</sup> Accordingly, because DFG's exercise of discretion is limited to issuance of the ITP, DFG is responsible for considering only the environmental effects that fall within its permitting authority pursuant to CESA.

This ITP, along with DFG's CEQA findings for the ITP and Project, which are available as a separate document, provides evidence of DFG's consideration of the lead agency's EIR for the Project and the environmental effects related to issuance of the ITP (CEQA Guidelines, § 15096, subd. (f)). DFG finds that issuance of the ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, DFG finds adherence to and implementation of the Conditions of Project Approval adopted by the lead agency, as well as adherence to and implementation of the Conditions of Approval imposed by DFG through the issuance of this ITP, will avoid or reduce to below a level of significance any such potential effects. DFG consequently finds that issuance of the ITP will not result in any significant, adverse impacts on the environment.

**Findings under CESA:**

These findings are intended to document DFG's compliance with the specific findings requirements set forth in CESA and related regulations. (Fish & G. Code § 2081, subs. (b)-(c); Cal. Code Regs., tit 14, §§ 783.4, subds. (a)-(b), 783.5, subd. (c)(2).)

DFG finds that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs under CESA:

- (1) Take of Covered Species as defined in the ITP will be incidental to the otherwise lawful activities covered under the ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly Compliance Reports. DFG evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and DFG's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, DFG determined that the protection and management in perpetuity of 259.5 acres of compensatory habitat that is contiguous with other protected Covered

<sup>4</sup> The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;

- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (6) The ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;
- (7) Permittee has ensured adequate funding to implement the measures required by the ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of the ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (a) known population trends; (b) known threats to the species; and (c) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, DFG's finding is based, in part, on DFG's express authority to amend the terms and conditions of the ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.


**Attachments:**

FIGURE 1	Map of Project
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2	Tortoise Handling Guidelines
ATTACHMENT 3A, 3B	Habitat Management Lands Checklist; PLFAF Form
ATTACHMENT 4	Letter of Credit Form
ATTACHMENT 5	Mitigation Payment Transmittal Form

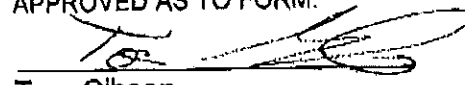
**ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND GAME**

on 22 November 2010

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Kimberly Nicol, Regional Manager  
INLAND DESERTS REGION

APPROVED AS TO FORM:

  
Tom Gibson  
General Counsel

**ACKNOWLEDGMENT**

The undersigned: (1) warrants that he or she is acting as a duly authorized representative of the Permittee, (2) acknowledges receipt of this ITP, and (3) agrees on behalf of the Permittee to comply with all terms and conditions of the ITP.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

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